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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
et al., :
Plaintiffs :
v. : No. 1:23-cv-00108
GOOGLE, LLC, :
Defendants. :

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Monday, August 21, 2023

Video Deposition of CHRISTOPHER KOEPKE,
taken at the Law Offices of Paul, Weiss,
Rifkind, Wharton & Garrison LLP, 2001 K St NW,
Washington, DC, beginning at 9:35 a.m. Eastern
Standard Time, before Ryan K. Black, Registered
Professional Reporter, Certified Livenote
Reporter and Notary Public in and for the
District of Columbia

Job No. CS6043164

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>4 ANTITRUST DIVISION</p> <p>5 BY: KATHERINE CLEMONS, ESQ</p> <p>6 VICTOR LIU, ESQ</p> <p>7 ALVIN CHU, ESQ</p> <p>8 MARK SOSNOWSKY, ESQ - Via Zoom</p> <p>9 450 5th Street, N W</p> <p>10 Washington, DC 20530</p> <p>11 202 514 2414</p> <p>12 katherine.clemons@usdoj.gov</p> <p>13 victor.liu@usdoj.gov</p> <p>14 alvin.chu@usdoj.gov</p> <p>15 mark.sosnowsky@usdoj.gov</p> <p>16 Representing - The United States of America</p> <p>17</p> <p>18 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP,</p> <p>19 BY: MARTHA L. GOODMAN, ESQ</p> <p>20 HEATHER C. MILLIGAN, ESQ</p> <p>21 2001 K St NW,</p> <p>22 Washington, DC</p> <p>23 202 223 7341</p> <p>24 mgoodman@paulweiss.com</p> <p>25 hmilligan@paulweiss.com</p> <p>26 Representing - Google LLC</p> <p>27</p> <p>28 ALSO PRESENT:</p> <p>29 Orson Braithwaite - Legal Videographer</p> <p>30 Kenneth Whitley - Department of Health and Human</p> <p>31 Services</p>	<p>1 THE VIDEOGRAPHER: Good morning. We are</p> <p>2 going on the record at 9:35 a.m. on August 21st,</p> <p>3 2023. Please note that the microphones are</p> <p>4 sensitive and may pick up whispering and private</p> <p>5 conversations. Please mute your phones at this</p> <p>6 time. Audio and video recording will continue to</p> <p>7 take place unless all parties agree to go off the</p> <p>8 record.</p> <p>9 This is Media Unit 1 of the</p> <p>10 video-recorded deposition of Mr. Christopher</p> <p>11 Koepke in the matter of United States, et al.,</p> <p>12 versus Google, LLC, filed in the United States</p> <p>13 District Court Eastern District of Virginia</p> <p>14 Alexandria Division, Case Number</p> <p>15 1:23-cv-00108-LMB-JFA.</p> <p>16 My name is Orson Braithwaite,</p> <p>17 representing Veritext Legal Solutions, and I'm</p> <p>18 the videographer. The court reporter is Ryan</p> <p>19 Black, from the firm Veritext Legal Solutions.</p> <p>20 Counsel will now state their appearances</p> <p>21 and affiliations for the record.</p> <p>22 MS. GOODMAN: Martha Goodman, from Paul</p> <p>23 Weiss, on behalf of Google LLC.</p> <p>24 MS. MILLIGAN: Heather Milligan, also on</p> <p>25 behalf of Paul Weiss, for Google.</p>
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<p>1 INDEX</p> <p>2 TESTIMONY OF: CHRISTOPHER KOEPKE PAGE</p> <p>3 By Ms Goodman 6</p> <p>4 EXHIBITS</p> <p>5 EXHIBIT DESCRIPTION PAGE</p> <p>6 Exhibit 65 a document Bates Numbered</p> <p>7 CMS-ADS-11906 through 11974 117</p> <p>8 Exhibit 66 a document Bates Numbered</p> <p>9 CMS-ADS-23248 through 23337 136</p> <p>10 Exhibit 67 a document Bates Numbered</p> <p>11 CMS-ADS-59892 through 59893 151</p> <p>12 Exhibit 68 a document Bates Numbered</p> <p>13 CMS-ADS-593107 through 593110 167</p> <p>14 Exhibit 69 a document Bates Numbered</p> <p>15 CMS-ADS-183807 through 183811 181</p> <p>16 Exhibit 70 a document Bates Numbered</p> <p>17 CMS-ADS-529199 through 529200 190</p> <p>18 Exhibit 71 a document Bates Numbered</p> <p>19 CMS-ADS-189390 251</p> <p>20 Exhibit 72 a document Bates Numbered</p> <p>21 CMS-ADS-64968 through 64971 258</p> <p>22 Exhibit 73 a document Bates Numbered</p> <p>23 CMS-ADS-440295 265</p> <p>24 Exhibit 74 a document Bates Numbered</p> <p>25 CMS-ADS-531032 through 531072 268</p> <p>26 Exhibit 75 a document Bates Numbered</p> <p>27 CMS-ADS-569654 through 569667 273</p>	<p>1 MS. CLEMONS: Katherine Clemons, with</p> <p>2 the Department of Justice, on behalf of the</p> <p>3 United States of America, CMS and the witness.</p> <p>4 MR. LIU: Victor Liu, also with the</p> <p>5 Department of Justice, on behalf of the United</p> <p>6 States and CMS.</p> <p>7 MR. CHU: Alvin Chu, on behalf of United</p> <p>8 States.</p> <p>9 MR. WHITLEY: Kenneth Whitley, Office of</p> <p>10 General Counsel, Department of Health and Human</p> <p>11 Services.</p> <p>12 MS. GOODMAN: And could the folks</p> <p>13 attending remotely please state your presence?</p> <p>14 MR. SOSNOWSKY: Mark Sosnowsky,</p> <p>15 Department of Justice, and I will be in and out</p> <p>16 of this deposition remotely. So if you lose me,</p> <p>17 please don't -- you can continue.</p> <p>18 THE VIDEOGRAPHER: Thank you.</p> <p>19 Would the court reporter please swear in</p> <p>20 the witness?</p> <p>21 * * *</p> <p>22 Whereupon --</p> <p>23 CHRISTOPHER KOEPKE,</p> <p>24 called to testify, having been first duly sworn</p> <p>25 or affirmed, was examined and testified as</p>

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<p style="text-align: right;">Page 6</p> <p>1 follows:</p> <p>2 * * *</p> <p>3 EXAMINATION</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Good morning, Mr. Koepke.</p> <p>6 A. Good morning.</p> <p>7 Q. Have you been deposed before?</p> <p>8 A. I think once. I'm not exactly sure it</p> <p>9 was a formal deposition, --</p> <p>10 Q. Okay.</p> <p>11 A. -- but yes.</p> <p>12 Q. Was there a court reporter taking down</p> <p>13 everything you were saying?</p> <p>14 A. No, there was not.</p> <p>15 Q. Okay. So in this deposition,</p> <p>16 it's important that you allow me to finish my</p> <p>17 question before you answer, because our court</p> <p>18 reporter, Mr. Black, is taking down everything</p> <p>19 we're saying --</p> <p>20 A. All right.</p> <p>21 Q. -- and he can't take two people talking</p> <p>22 at the same time. Okay?</p> <p>23 A. All right.</p> <p>24 Q. So please let me finish my question</p> <p>25 before you begin your answer. Okay?</p>	<p style="text-align: right;">Page 8</p> <p>1 healthcare programs. When we need people,</p> <p>2 citizens of America to take an action, it is my</p> <p>3 job to do outreach to help them know what actions</p> <p>4 they need to take. I could probably go on for</p> <p>5 the rest of the day with details on that.</p> <p>6 Q. I'm sure we'll get to it. How long have</p> <p>7 you been the director -- is the strategic</p> <p>8 marketing -- strike that.</p> <p>9 Is the Strategic Marketing Group</p> <p>10 abbreviated SMG?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Okay. How long have you been director</p> <p>13 of SMG?</p> <p>14 A. Approximately nine to ten years.</p> <p>15 Q. And prior to serving as director of SMG,</p> <p>16 what -- what job did you have, if any?</p> <p>17 A. I was the deputy director of the</p> <p>18 Creative Services Group in the Office of</p> <p>19 Communications at the Centers for Medicare and</p> <p>20 Medicaid Services.</p> <p>21 Q. And how long were you the deputy</p> <p>22 director of the Creative Services Group?</p> <p>23 A. I would say three to four years.</p> <p>24 Q. In your role as director of SMG, who do</p> <p>25 you report to?</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Okay.</p> <p>2 Q. Okay. And the court reporter also</p> <p>3 cannot record nonverbal answers or half verbal</p> <p>4 answers, like uh-huh or huh-uh, so please make</p> <p>5 sure to speak in a -- answer the questions</p> <p>6 verbally. Okay?</p> <p>7 A. Okay.</p> <p>8 Q. Okay. And I will assume that you</p> <p>9 understand my questions unless you ask me for a</p> <p>10 clarification. Okay?</p> <p>11 A. Okay.</p> <p>12 Q. And is there any reason you're unable to</p> <p>13 provide your truthful and accurate testimony here</p> <p>14 today?</p> <p>15 A. No.</p> <p>16 Q. Okay. What is your current title?</p> <p>17 A. Director of the Strategic Marketing</p> <p>18 Group in the Office of Communications at the</p> <p>19 Centers for Medicare and Medicaid Services.</p> <p>20 Q. And what are your responsibilities as</p> <p>21 the director of the Strategic Marketing Group at</p> <p>22 the Office of Communications at the Centers for</p> <p>23 Medicare and Medicaid Services?</p> <p>24 A. When -- this federal agency is</p> <p>25 responsible for Medicare, Medicaid and other</p>	<p style="text-align: right;">Page 9</p> <p>1 A. I report to the deputy director of the</p> <p>2 Office of Communications.</p> <p>3 Q. And what is that individual's name?</p> <p>4 A. Mary Wallace.</p> <p>5 Q. How long has Mary Wallace been the</p> <p>6 person to whom you've -- who you report?</p> <p>7 A. Nine to ten years.</p> <p>8 Q. And to whom does Ms. Wallace report?</p> <p>9 MS. CLEMONS: Objection; foundation.</p> <p>10 THE WITNESS: Many people, but the</p> <p>11 administrator of CMS.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. And who is the current administrator of</p> <p>14 CMS?</p> <p>15 A. Chiquita Brooks-LaSure.</p> <p>16 Q. And how long has Ms. LaSure been the</p> <p>17 administrator at CMS?</p> <p>18 MS. CLEMONS: Objection; foundation.</p> <p>19 THE WITNESS: I don't know when she was</p> <p>20 confirmed.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. Okay. How many administrators of CMS</p> <p>23 have you worked under over the course of your</p> <p>24 time as director of SMG?</p> <p>25 A. I could give you an approximate number.</p>

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<p style="text-align: right;">Page 10</p> <p>1 I'm sure I might be forgetting someone. Five or</p> <p>2 six.</p> <p>3 Q. And how about in the time period of 2019</p> <p>4 to 2023, how many administrators have you worked</p> <p>5 under in that time period?</p> <p>6 A. There's one detail I can't remember, but</p> <p>7 from confirmed administrators by the Senate would</p> <p>8 be two.</p> <p>9 Q. And what is the one detail you can't</p> <p>10 remember?</p> <p>11 A. Usually in between confirmed</p> <p>12 administrators there is a career administrator,</p> <p>13 and I cannot remember who that was or how many</p> <p>14 there were between the last two confirmed ones.</p> <p>15 Q. Okay. And are the -- those career</p> <p>16 officials, are they serving in an acting</p> <p>17 capacity, in your experience?</p> <p>18 A. That is correct.</p> <p>19 Q. And how many presidential</p> <p>20 administrations have you served under?</p> <p>21 MS. CLEMONS: Objection; vague.</p> <p>22 THE WITNESS: Five.</p> <p>23 BY MS. GOODMAN:</p> <p>24 Q. And are those both republican and</p> <p>25 democratic administrations?</p>	<p style="text-align: right;">Page 12</p> <p>1 Another is the Division of Digital Marketing.</p> <p>2 And the other one is the Division of Campaign</p> <p>3 Management.</p> <p>4 Q. Who is the head -- who is the division</p> <p>5 director of the Research Division?</p> <p>6 A. Clarese Astrin.</p> <p>7 Q. How long has Ms. Astrin been the</p> <p>8 director of the Research Division?</p> <p>9 A. I'm not sure exactly how many years it's</p> <p>10 been.</p> <p>11 Q. Can you approximate?</p> <p>12 A. About 10 years.</p> <p>13 Q. Okay. Who is the director of Digital</p> <p>14 Marketing?</p> <p>15 A. Mark Krawczyk.</p> <p>16 Q. How long has Mr. Krawczyk been the</p> <p>17 director of Digital Marketing?</p> <p>18 A. I'm not sure.</p> <p>19 Q. Can you approximate?</p> <p>20 A. I can.</p> <p>21 Q. What's your approximate --</p> <p>22 A. Six to seven years.</p> <p>23 Q. Who is the director of the Campaign</p> <p>24 Management Division?</p> <p>25 A. Barbara Johanson.</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Yes.</p> <p>2 Q. Are you also an adjunct -- oh, strike</p> <p>3 that.</p> <p>4 Who reports to you in your role as</p> <p>5 director of SMG?</p> <p>6 MS. CLEMONS: Objection; form.</p> <p>7 THE WITNESS: Do you want the entire</p> <p>8 list of people or my immediate reports?</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. Let's go with your direct reports,</p> <p>11 please.</p> <p>12 A. Okay. There would be three division</p> <p>13 directors, a special assistant, a deputy director</p> <p>14 and an office administrator.</p> <p>15 Q. And has that -- those one, two, three,</p> <p>16 four, five -- have you always had six direct</p> <p>17 reports in your time as director of SMG?</p> <p>18 A. I'm not sure.</p> <p>19 Q. How about in the time period of 2019 to</p> <p>20 2023, have you always had six direct reports?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Who are the -- what are the three</p> <p>23 divisions which report up to you as director of</p> <p>24 SMG?</p> <p>25 A. One of them is the Division of Research.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. And how long has Ms. Johanson been the</p> <p>2 director of the Campaign Management Division?</p> <p>3 A. I'm not sure.</p> <p>4 Q. How about an approximation?</p> <p>5 A. Three years.</p> <p>6 Q. Prior to serving as director of the</p> <p>7 Campaign Management Division, did Ms. Johanson</p> <p>8 have a role in the SMG?</p> <p>9 A. Yes.</p> <p>10 Q. What was her role prior to becoming</p> <p>11 director of the Campaign Management Division?</p> <p>12 A. She was an analyst within that division</p> <p>13 that she now directs.</p> <p>14 Q. And who is the deputy director that</p> <p>15 reports to you?</p> <p>16 A. Laura Salerno.</p> <p>17 Q. How long has she been the direct</p> <p>18 -- deputy director at SMG?</p> <p>19 A. I'm not sure.</p> <p>20 Q. How about an approximation?</p> <p>21 A. Three to four years.</p> <p>22 Q. Prior to being the deputy director, did</p> <p>23 Ms. Salerno have a job in the SMG?</p> <p>24 A. Yes, she did.</p> <p>25 Q. What was her role prior to becoming the</p>

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<p>1 audiences, we are taking into consideration those</p> <p>2 that are more mobile-reliant. And we direct our</p> <p>3 contractors to place more mobile programmatic</p> <p>4 ads.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. How does CMS go about placing</p> <p>7 programmatic ads on desktop devices --</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. -- or in a desktop format?</p> <p>11 MS. CLEMONS: Objection; form.</p> <p>12 Foundation.</p> <p>13 THE WITNESS: The same.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And then same question as to video. How</p> <p>16 does CMS go about placing programmatic video ads?</p> <p>17 MS. CLEMONS: Objection; form.</p> <p>18 Foundation.</p> <p>19 THE WITNESS: We think about our</p> <p>20 audience, how they're gonna interact with the</p> <p>21 information. And we direct our contractors to</p> <p>22 place the ads accordingly.</p> <p>23 BY MS. GOODMAN:</p> <p>24 Q. Do you direct your contractors to use</p> <p>25 any particular video -- programmatic provider --</p>	<p>1 data. And we develop mechanisms for people to</p> <p>2 choose, for their own privacy. And we -- and we</p> <p>3 then publish it.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. So is it accurate that I should be able</p> <p>6 to find, publicly, any TPWA analysis for any</p> <p>7 Google programmatic tool --</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. -- done by CMS?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. You said that one fact -- the</p> <p>13 other factor is likelihood of reaching your</p> <p>14 audience. How do you evaluate a programmatic</p> <p>15 provider's likelihood of reaching your intended</p> <p>16 audience?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 THE WITNESS: There are really two</p> <p>19 factors, depending on the audience. Massive</p> <p>20 reach is actually a very good factor. Another</p> <p>21 is that there are some -- some programmatic</p> <p>22 providers through which data can be used to try</p> <p>23 to target specific audiences.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Who are the programmatic providers</p>
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<p>1 MS. CLEMONS: Objection to form.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. -- for mobile, video or desktop?</p> <p>4 MS. CLEMONS: Same objection.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. What direction do you provide your</p> <p>8 contractors with respect to the programmatic</p> <p>9 providers CMS -- they should use on your behalf?</p> <p>10 MS. CLEMONS: Objection; form.</p> <p>11 THE WITNESS: There are two factors.</p> <p>12 Programmatic providers that are likely to</p> <p>13 reach our audience, and program -- programmatic</p> <p>14 providers for whom we have done a privacy</p> <p>15 analysis.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. What does the privacy analysis entail?</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: We -- the government as a</p> <p>20 whole, and -- and we're very important to us, we</p> <p>21 -- the finished product is what we call a TPWA,</p> <p>22 Third-party WA. And it is published for everyone</p> <p>23 to see and read.</p> <p>24 We go through a process of analyzing how</p> <p>25 that company -- that programmatic company, uses</p>	<p>1 you're thinking of that -- through which data can</p> <p>2 be used to try to target specific audiences?</p> <p>3 A. All of them. And they will develop</p> <p>4 products that could be useful, or, more or less,</p> <p>5 useful, for specific audiences.</p> <p>6 Q. I see. So are you aware of any</p> <p>7 programmatic providers who are more useful at</p> <p>8 serving a minority or diverse population as</p> <p>9 compared to the general market?</p> <p>10 MS. CLEMONS: Objection; form.</p> <p>11 Foundation.</p> <p>12 THE WITNESS: There are those that</p> <p>13 develop products for that purpose.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Can you think of any sitting here today?</p> <p>16 A. I don't see any of them sitting here</p> <p>17 today.</p> <p>18 Q. I'm asking if you can -- can you name</p> <p>19 any of these programmatic providers by name that</p> <p>20 you're thinking of?</p> <p>21 A. Resonate.</p> <p>22 Q. What does Resonate do?</p> <p>23 MS. CLEMONS: Objection; form.</p> <p>24 THE WITNESS: I can't say I'm an expert</p> <p>25 in everything the company does.</p>

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<p>1 BY MS. GOODMAN:</p> <p>2 Q. What does Resonate do with assisting CMS</p> <p>3 in its programmatic advertising?</p> <p>4 MS. CLEMONS: Objection; form.</p> <p>5 Foundation.</p> <p>6 THE WITNESS: We have historically used</p> <p>7 them for targeting Spanish-speaking audiences.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Any other examples of programmatic ad</p> <p>10 providers that you can think of which CMS has</p> <p>11 used?</p> <p>12 MS. CLEMONS: Objection to form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Which ones?</p> <p>16 MS. CLEMONS: Same objection.</p> <p>17 THE WITNESS: MIQ.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. And for what purpose do you use MIQ --</p> <p>20 MS. CLEMONS: Objection to form.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. -- relative to any other programmatic</p> <p>23 provider?</p> <p>24 A. There are two things that we would use</p> <p>25 MIQ for relative to a programmatic provider. One</p>	<p>1 provider?</p> <p>2 MS. CLEMONS: Objection to form.</p> <p>3 Foundation.</p> <p>4 THE WITNESS: We would invest in more</p> <p>5 than one programmatic provider in an effort to</p> <p>6 see how the return on investment goes across them</p> <p>7 and to most efficiently use the taxpayer dollars.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Have you heard of Huddled Masses?</p> <p>10 A. Yes.</p> <p>11 Q. Is that another programmatic provider</p> <p>12 CMS has used?</p> <p>13 A. Yes.</p> <p>14 Q. And why does CMS choose to use Huddled</p> <p>15 Masses relative to any other programmatic</p> <p>16 provider?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 THE WITNESS: We invest in more than</p> <p>19 one pro -- programmatic provider so we can track</p> <p>20 their return on investment so we can best use</p> <p>21 taxpayer dollars -- be most efficient.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. How about Diligent? Have you heard that</p> <p>24 name before?</p> <p>25 A. Yes, I have.</p>
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<p>1 is by investing in two different programmatic</p> <p>2 providers, or more than one, we can track</p> <p>3 their ROI, so we can use taxpayer dollars most</p> <p>4 efficiently. So we're not just locked into one</p> <p>5 all the time. And MIQ has developed a product to</p> <p>6 try to identify, as best as possible, people who</p> <p>7 would make a good target who might be looking for</p> <p>8 health insurance.</p> <p>9 Q. Can you think of any other programmatic</p> <p>10 providers that CMS has used besides MIQ and</p> <p>11 Resonate?</p> <p>12 MS. CLEMONS: Objection; form.</p> <p>13 THE WITNESS: There are others, and at</p> <p>14 the moment I'm drawing a blank.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. Okay. Have you heard the name the Trade</p> <p>17 Desk?</p> <p>18 A. Yes.</p> <p>19 Q. Is that a programmatic provider you</p> <p>20 recall CMS using?</p> <p>21 A. Yes.</p> <p>22 MS. CLEMONS: Objection to form.</p> <p>23 BY MS. GOODMAN:</p> <p>24 Q. And do you know why CMS would choose the</p> <p>25 Trade Desk relative to any other programmatic</p>	<p>1 Q. Is that a programmatic provider that CMS</p> <p>2 has used?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 THE WITNESS: To the best of my</p> <p>5 knowledge, yes.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. And why does CMS choose to use Diligent</p> <p>8 relative to any other programmatic provider?</p> <p>9 MS. CLEMONS: Objection; form.</p> <p>10 THE WITNESS: We invest in Diligent as</p> <p>11 we would other programmatic providers for the</p> <p>12 purpose of tracking the ROI and assessing who is</p> <p>13 providing the best return on investment for the</p> <p>14 taxpayer.</p> <p>15 MS. CLEMONS: We've been on the record</p> <p>16 for about 90 minutes. Do you need a break or --</p> <p>17 THE WITNESS: I could use a little more</p> <p>18 water. Yeah. Probably the restroom then.</p> <p>19 MS. GOODMAN: Can I just ask a couple</p> <p>20 more questions.</p> <p>21 THE WITNESS: Did you record that?</p> <p>22 MS. GOODMAN: Can I just finish with a</p> <p>23 few more other examples to see if you've heard of</p> <p>24 them?</p> <p>25 THE WITNESS: I feel -- I feel I can</p>

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<p>1 keep going.</p> <p>2 MS. CLEMONS: Okay.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Thank you. I appreciate it. And then</p> <p>5 we can take a break.</p> <p>6 GumGum. Have you heard of GumGum?</p> <p>7 A. Yes.</p> <p>8 Q. Is that a programmatic provider CMS has</p> <p>9 used.</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: We usually use GumGum,</p> <p>12 yes.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And how do you -- why does CMS use</p> <p>15 GumGum relative to any other programmatic</p> <p>16 provider?</p> <p>17 MS. CLEMONS: Objection; form.</p> <p>18 THE WITNESS: We invest in multiple</p> <p>19 programmatic providers so we can track their ROI,</p> <p>20 their return on investment, to be as efficient as</p> <p>21 possible.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. And what about Adsmovil? Have you heard</p> <p>24 of Adsmovil?</p> <p>25 A. Yes.</p>	<p>1 used?</p> <p>2 MS. CLEMONS: Objection to form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And why has CMS used MNI relative to any</p> <p>6 other programmatic provider?</p> <p>7 MS. CLEMONS: Objection; form.</p> <p>8 THE WITNESS: We invest in multiple</p> <p>9 programmatic providers so we can track their</p> <p>10 return on investment so we can see what is most</p> <p>11 efficient at achieving our goals.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Okay. And then can you think of any</p> <p>14 Google programmatic services that CMS has used?</p> <p>15 MS. CLEMONS: Objection; form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Which ones?</p> <p>19 A. Google Display Network and DV360.</p> <p>20 Q. [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 MS. CLEMONS: Objection; form.</p> <p>24 THE WITNESS: [REDACTED]</p> <p>25 [REDACTED]</p>
Page 71	Page 73
<p>1 Q. Is that a programmatic provider that CMS</p> <p>2 has used.</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Why do you use Adsmovil relative to any</p> <p>7 other programmatic provider?</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 THE WITNESS: We use multiple</p> <p>10 programmatic providers to track the return on</p> <p>11 investment on a particular campaign to be most</p> <p>12 efficient to achieve our goals for the American</p> <p>13 taxpayer.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And last one. Have you heard of</p> <p>16 QuantiCast?</p> <p>17 A. Yes.</p> <p>18 Q. Is that a programmatic provider that CMS</p> <p>19 has used?</p> <p>20 MS. CLEMONS: Objection; form.</p> <p>21 THE WITNESS: I am not sure.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Okay. Have you heard of MNI?</p> <p>24 A. Yes.</p> <p>25 Q. Is that a programmatic provider CMS has</p>	<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Okay.</p> <p>5 A. [REDACTED].</p> <p>6 MS. GOODMAN: Okay. We can take a</p> <p>7 break.</p> <p>8 THE VIDEOGRAPHER: The time is 11:03</p> <p>9 a.m. This ends unit 1. We're off the record.</p> <p>10 (Recess taken.)</p> <p>11 THE VIDEOGRAPHER: The time is 11:20</p> <p>12 a.m. This begins Unit Number 2. We're on the</p> <p>13 record.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Mr. Koepke, have you -- can you think of</p> <p>16 any other places CMS has placed ads that would be</p> <p>17 in the bucket of ads within a logged-in</p> <p>18 experience?</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 THE WITNESS: Not off the top of my</p> <p>21 head.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. And another kind of digital ad we've</p> <p>24 discussed was OTT ads. Do you recall that?</p> <p>25 A. Yes.</p>

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<p>1 Q. What -- what places has CMS placed OTT</p> <p>2 ads?</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 THE WITNESS: Hulu. I'm pulling a blank</p> <p>5 on a couple of the others. Competitors to Hulu.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. And do you know what mechanism CMS uses</p> <p>8 to place ads on Hulu or other competitors to</p> <p>9 Hulu?</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: We provide direction to</p> <p>12 our contractors to place ads on OTT to reach</p> <p>13 audiences of interest for our programs.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And do you provide any direction in what</p> <p>16 particular way to place OTT ads in order to reach</p> <p>17 audiences of interest?</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: We provide direction as to</p> <p>20 the tactics and the channels that will reach the</p> <p>21 audiences of our interest.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Do you -- do you direct them to use any</p> <p>24 particular ad-buying tool in order to place ads</p> <p>25 on OTT?</p>	<p>1 who did not make it through the privacy analysis</p> <p>2 and was not approved for use?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: I am not.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. So we've talked about a variety of types</p> <p>8 of digital ads, YouTube, programmatic mobile,</p> <p>9 programmatic video, programmatic display, ads</p> <p>10 with publishers, website takeovers, ads within a</p> <p>11 logged-in experience, including Google Discovery,</p> <p>12 Facebook, Instagram, Twitter and LinkedIn,</p> <p>13 Search, including Google and Bing and</p> <p>14 over-the-top ads, including Hulu and competitors</p> <p>15 of Hulu. How does CMS decide which of those</p> <p>16 digital categories to use when making decisions</p> <p>17 about advertising?</p> <p>18 MS. CLEMONS: Objection; form.</p> <p>19 Foundation.</p> <p>20 THE WITNESS: We consider the audience</p> <p>21 that we try to reach, the behavior we want them</p> <p>22 to do, and the size of the budget that we have at</p> <p>23 our disposal.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Anything else that you consider in</p>
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<p>1 MS. CLEMONS: Objection to form.</p> <p>2 Foundation.</p> <p>3 THE WITNESS: We do.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And what ad-buying tools do you direct</p> <p>6 the ad agencies to use in order to place ads on</p> <p>7 OTT?</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 THE WITNESS: I'm not sure.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Okay. So how do you know that you</p> <p>12 direct them to use particular ad-buying tools?</p> <p>13 A. In our media plans, we approve the</p> <p>14 entire media plan, which included ad-buying</p> <p>15 tools.</p> <p>16 Q. And do all of the ad-buying tools used</p> <p>17 by ad agencies for CMS need to go through the</p> <p>18 privacy analysis that we talked about earlier?</p> <p>19 MS. CLEMONS: Objection; form.</p> <p>20 Foundation.</p> <p>21 THE WITNESS: To the degree that there</p> <p>22 is a data exchange with our website. That's the</p> <p>23 key.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Are you aware of any digital ad provider</p>	<p>1 making a decision on which advertising -- digital</p> <p>2 advertising category to use?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 THE WITNESS: That might vary by</p> <p>5 campaign, but off the top of my head I can't say.</p> <p>6 What I said was the most important.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Does CMS try to create an appropriate</p> <p>9 mix of advertising across all of the categories</p> <p>10 that we've discussed?</p> <p>11 MS. CLEMONS: Objection; form.</p> <p>12 THE WITNESS: What would be your</p> <p>13 definition of appropriate mix?</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. For whatever is -- CMS deems to be</p> <p>16 appropriate for a given campaign. So do you</p> <p>17 decide to use multiple different channels, and,</p> <p>18 if so, how do you make those decisions?</p> <p>19 MS. CLEMONS: Objection; form.</p> <p>20 THE WITNESS: We assess the goal of</p> <p>21 the campaign, the audience that we're trying to</p> <p>22 reach, how we can best reach them, and the amount</p> <p>23 of resources we have.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. And in the course of those</p>

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<p>1 But it demonstrated that the outreach resulted in</p> <p>2 -- and this is the number I'm not -- but resulted</p> <p>3 in many people getting health coverage.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. As compared to the prior year?</p> <p>6 A. We did not do Mixed Media Modeling the</p> <p>7 private -- prime -- the previous year, so as</p> <p>8 related to the number of uninsured people, --</p> <p>9 Q. Got it.</p> <p>10 A. -- the audience at that time. And other</p> <p>11 factors that could also increase enrollment.</p> <p>12 Q. What are the other factors that could</p> <p>13 also increase enrollment to which you're</p> <p>14 referring?</p> <p>15 A. For a set number of years, a law was</p> <p>16 passed that impacted the tax breaks that people</p> <p>17 could get for having health insurance, thereby</p> <p>18 reducing their premiums for the health insurance.</p> <p>19 Q. So over the time period at issue, or</p> <p>20 that I'm focusing on in this case, 2019 to 2023,</p> <p>21 it's fair to say that the budget available for</p> <p>22 advertising and outreach has increased, correct?</p> <p>23 MS. CLEMONS: Objection; form.</p> <p>24 THE WITNESS: Yes.</p> <p>25 BY MS. GOODMAN:</p>	<p>1 that could be the problem with my thinking, but</p> <p>2 display advertising has actually appeared, in my</p> <p>3 memory, from best that I can recall, to become</p> <p>4 more impactful.</p> <p>5 Q. In what ways that you can recall has</p> <p>6 display advertising become more impactful?</p> <p>7 A. Best of my recollection, return on</p> <p>8 investment appears to be higher.</p> <p>9 Q. And what return on investment are you</p> <p>10 tracking with respect to display advertising in</p> <p>11 the Open Enrollment campaigns?</p> <p>12 MS. CLEMONS: Objection to form.</p> <p>13 THE WITNESS: We have primarily three</p> <p>14 methods for looking at the role of display.</p> <p>15 Method Number 1 is looking at the people who</p> <p>16 directly interact with the ad, so what we often</p> <p>17 call last-click attribution. Method Number 2 is</p> <p>18 multi-source attribution; still within the</p> <p>19 digital realm. And Method Number 3 is the Mixed</p> <p>20 Media Modeling.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. And so in what ways has the return on</p> <p>23 investment according to those methods gotten</p> <p>24 higher? Like, what changes are you seeing in</p> <p>25 those metrics vis-a-vis return on investment?</p>
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<p>1 Q. Okay. And how have you, in the</p> <p>2 Strategic Marketing Group, made decisions about</p> <p>3 how to spend those additional dollars over that</p> <p>4 time period?</p> <p>5 MS. CLEMONS: Objection; form.</p> <p>6 THE WITNESS: We considered the audience</p> <p>7 and how best to reach them, and we -- and we</p> <p>8 distribute the funds accordingly.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. And what changes have you observed with</p> <p>11 respect to how best to reach the audiences you're</p> <p>12 trying to reach over the 2019 to '23 time period</p> <p>13 as part of the Open Enrollment campaigns?</p> <p>14 MS. CLEMONS: Objection; form.</p> <p>15 Foundation.</p> <p>16 THE WITNESS: I'm not sure the channel</p> <p>17 mix for most effectively reaching the audience</p> <p>18 during that time period, based on my observations</p> <p>19 of what would be best for reaching that audience,</p> <p>20 has changed significantly, more subtle changes.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. And what are the subtle changes that you</p> <p>23 have observed?</p> <p>24 A. Over a time period, and this could be</p> <p>25 beyond the time period that you're mentioning, so</p>	<p>1 MS. CLEMONS: Objection; form.</p> <p>2 Foundation.</p> <p>3 THE WITNESS: To the best of my</p> <p>4 recollection, we are seeing an ability to</p> <p>5 attribute more application starts, and that is</p> <p>6 the number of people who would actually be</p> <p>7 applying for the tax break to help them pay for</p> <p>8 their health insurance, and more enrolling due to</p> <p>9 display ads, to the best of my recollection.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Have you observed any changes with</p> <p>12 respect to meeting the audience you're trying to</p> <p>13 reach with respect to video advertising in the</p> <p>14 2019 to '23 time period?</p> <p>15 MS. CLEMONS: Objection; form.</p> <p>16 THE WITNESS: I don't recall.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Are there any other subtle changes that</p> <p>19 you have observed over the 2019 to 2023 time</p> <p>20 period with respect to reaching the audience</p> <p>21 you're trying to reach for health -- Open</p> <p>22 Enrollment?</p> <p>23 MS. CLEMONS: Objection to form.</p> <p>24 THE WITNESS: I don't recall.</p> <p>25 BY MS. GOODMAN:</p>

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<p style="text-align: right;">Page 114</p> <p>1 Q. Okay. How about the -- have you</p> <p>2 observed any changes in the availability of</p> <p>3 advertising providers that you could use to reach</p> <p>4 your audience over the 2019 to 2023 time period?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 THE WITNESS: I don't recall.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. So earlier we talked about a lot of the</p> <p>9 different programmatic providers that CMS has</p> <p>10 used.</p> <p>11 A. Mm-hmm.</p> <p>12 Q. Do you recall that testimony?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Okay. With respect to those providers,</p> <p>15 were they all available to CMS in the 2019 year</p> <p>16 as compared to the 2023 year?</p> <p>17 MS. CLEMONS: Objection; form.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Are you aware of any advertising</p> <p>21 providers who were not available to CMS in</p> <p>22 2019 but who are available to CMS in 2023?</p> <p>23 MS. CLEMONS: Objection to form.</p> <p>24 THE WITNESS: I am not.</p> <p>25 BY MS. GOODMAN:</p>	<p style="text-align: right;">Page 116</p> <p>1 best of my recollection, that type of display</p> <p>2 ad has increased in its value to us.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And how does CMS go about -- what</p> <p>5 methods does CMS use to place these kinds of</p> <p>6 prospecting display ads?</p> <p>7 MS. CLEMONS: Objection to form.</p> <p>8 THE WITNESS: We direct our contractors</p> <p>9 to do it on our behalf.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And do you direct them to use any</p> <p>12 particular provider?</p> <p>13 MS. CLEMONS: Objection to form.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: We will direct them to use</p> <p>16 particular providers.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Okay. So with respect to the increasing</p> <p>19 effectiveness of prospecting display ads, what</p> <p>20 providers have you used?</p> <p>21 MS. CLEMONS: Objection to form.</p> <p>22 THE WITNESS: [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Which are those?</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. Okay. So one of the subtle changes</p> <p>2 that you said you observed was that display has</p> <p>3 become more impactful, correct? And when you say</p> <p>4 "display," can you be more detailed about what</p> <p>5 kind of display advertising you mean that has</p> <p>6 become more impactful as in having a higher</p> <p>7 return on investment?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 THE WITNESS: So kind of display really</p> <p>10 covers a lot of categories, because there's</p> <p>11 creative, there's delivery systems, there's</p> <p>12 targeted. Do you have anything particularly in</p> <p>13 mind?</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. No. I want to understand what you mean</p> <p>16 by "display being more impactful."</p> <p>17 A. All right.</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: So to the best of my</p> <p>20 recollection, display ads that -- what we would</p> <p>21 call -- I don't know. Let me see. I've gotta</p> <p>22 think of the term here -- prospecting. So those</p> <p>23 are the ads that go out and find people who could</p> <p>24 benefit from the program, who may or may not have</p> <p>25 ever interacted with the program before. To the</p>	<p style="text-align: right;">Page 117</p> <p>1 A. [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 Q. Sure.</p> <p>4 A. [REDACTED]</p> <p>5 MS. GOODMAN: Shall we take a break for</p> <p>6 lunch?</p> <p>7 MS. CLEMONS: Yeah.</p> <p>8 THE WITNESS: I'm good with whatever.</p> <p>9 THE VIDEOGRAPHER: The time is 12:22</p> <p>10 p.m. This ends Unit 2. We're off the record.</p> <p>11 (Lunch recess taken.)</p> <p>12 (Exhibit No. 65, a document Bates</p> <p>13 Numbered CMS-ADS-11906 through 11974, was</p> <p>14 introduced.)</p> <p>15 THE VIDEOGRAPHER: The time is 1:14 p.m.</p> <p>16 This begins Unit Number 3. We're on the record.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Mr. Koepke, I'm going to hand you a</p> <p>19 document marked Exhibit 65, CMS-ADS-11906 through</p> <p>20 11974.</p> <p>21 And this is a technical proposal from</p> <p>22 Weber Shandwick for Healthcare.gov 2010 Open</p> <p>23 Enrollment campaign, correct?</p> <p>24 A. I'm not sure. It's going to take me a</p> <p>25 minute to look at it.</p>

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<p>1 Q. Sure.</p> <p>2 A. It appears as such.</p> <p>3 Q. Okay. And what is the purpose of a</p> <p>4 technical proposal, to your knowledge?</p> <p>5 MS. CLEMONS: Objection; form.</p> <p>6 THE WITNESS: A technical proposal is</p> <p>7 part of a contracting process. So the offerers,</p> <p>8 which are the different ad agencies who might be</p> <p>9 interested in contracting with the federal</p> <p>10 government, would write a technical proposal to</p> <p>11 show their abilities to meet the standards that</p> <p>12 the federal government has set forward.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And did multiple different contractors</p> <p>15 compete each year for the Open Enrollment</p> <p>16 campaign, or was it only Webber Shandwick?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 THE WITNESS: Each year?</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Each year.</p> <p>21 A. Okay. It was not always only Weber</p> <p>22 Shandwick, to the best of my knowledge. I'm</p> <p>23 actually not a hundred percent sure, but -- so I</p> <p>24 don't know.</p> <p>25 Q. Okay. As the director of the Strategic</p>	<p>1 Marketing Group" incorrectly. It sounded correct</p> <p>2 to me.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Okay. I don't understand what the</p> <p>5 detail with respect to the Strategic Marketing</p> <p>6 Group led you to say no to my question.</p> <p>7 MS. CLEMONS: Objection to form.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Can you explain that to me?</p> <p>10 A. Your question had three parts: Have I</p> <p>11 ever read a technical proposal. Is it about</p> <p>12 advertising. And is it for the Strategic</p> <p>13 Marketing Group at CMS. I guess that's four</p> <p>14 parts.</p> <p>15 The Strategic Marketing Group did not</p> <p>16 exist when I read the technical proposals.</p> <p>17 Q. When did you read the technical</p> <p>18 proposals?</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 THE WITNESS: The early 2000s.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. So since the early 2000s, is it accurate</p> <p>23 that you have not read the strat -- the technical</p> <p>24 proposals submitted by ad agencies?</p> <p>25 MS. CLEMONS: Objection to form.</p>
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<p>1 man -- Marketing Group, did you review technical</p> <p>2 proposals?</p> <p>3 A. No, I did not.</p> <p>4 MS. CLEMONS: Objection to form.</p> <p>5 THE WITNESS: I'm so sorry.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Have you ever had occasion to read</p> <p>8 them?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: Have I ever had the</p> <p>11 occasion to read a technical proposal of any</p> <p>12 sort?</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Of -- related to any advertising</p> <p>15 campaign handled by the Strategic Marketing Group</p> <p>16 at CMS.</p> <p>17 A. You had a lot of very specific details</p> <p>18 in that question that would lead me to say no.</p> <p>19 Q. What are the specific details in my</p> <p>20 question that would lead you to say no?</p> <p>21 A. One of them was the "Strategic Marketing</p> <p>22 Group."</p> <p>23 Q. Did I state that incorrectly?</p> <p>24 MS. CLEMONS: Objection to form.</p> <p>25 THE WITNESS: You did not say "Strategic</p>	<p>1 THE WITNESS: The technical proposals</p> <p>2 are written by -- are read and judged by trained</p> <p>3 staff who work for me.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. And so your trained staff read</p> <p>6 and review them, but you do not; is that correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. Do you discuss the technical</p> <p>9 proposals with your staff?</p> <p>10 A. I do not.</p> <p>11 Q. Why not?</p> <p>12 A. Because it is inappropriate for people</p> <p>13 judging a technical proposal to talk with other</p> <p>14 people about it in the process of an acquisition.</p> <p>15 Q. Why is that improper or inappropriate?</p> <p>16 A. I would only be doing conjecture, but</p> <p>17 it's -- the government has a goal to be fair to</p> <p>18 all businesses. And so, therefore, the people</p> <p>19 who read the proposals and judge them are doing</p> <p>20 so in a non-biased sense. And discussing with</p> <p>21 anyone else could -- could increase or add bias</p> <p>22 to a process.</p> <p>23 Q. And which of your staff reviewed</p> <p>24 technical proposals for the Healthcare.gov Open</p> <p>25 Enrollment campaigns in the '19 to '23 time</p>

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<p style="text-align: right;">Page 138</p> <p>1 Q. Yes.</p> <p>2 What "record-breaking enrollment"</p> <p>3 occurred in OE9, if any?</p> <p>4 MS. CLEMONS: Objection; foundation.</p> <p>5 THE WITNESS: I did not write this, so I</p> <p>6 am not certain what they meant by it.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Are you aware of any records being</p> <p>9 broken with respect to OE9?</p> <p>10 A. In OE9, we had excellent enrollment</p> <p>11 success.</p> <p>12 Q. How did you attain excellent enrollment</p> <p>13 success in OE9?</p> <p>14 MS. CLEMONS: Objection; form.</p> <p>15 THE WITNESS: By understanding our</p> <p>16 audience and what motivates them, and delivering</p> <p>17 the campaign to help them understand the value of</p> <p>18 Healthcare.gov's plans for them.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Did Google assist in any way in</p> <p>21 obtaining ex -- excellent enrollment success in</p> <p>22 OOE9?</p> <p>23 MS. CLEMONS: Objection; form.</p> <p>24 Foundation.</p> <p>25 THE WITNESS: Google was, in OE9, a</p>	<p style="text-align: right;">Page 140</p> <p>1 MS. CLEMONS: Objection; form.</p> <p>2 Foundation.</p> <p>3 THE WITNESS: So prospecting is a series</p> <p>4 of ads that are sent out to a broader public</p> <p>5 that fit our target audience to talk about</p> <p>6 Healthcare.gov. Retargeting ads are ads from</p> <p>7 people who have been to our website, then</p> <p>8 receiving an ad reminding them of when the</p> <p>9 deadline's coming, things like that.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Over the course of your tenure in the</p> <p>12 Strategic Marketing Group, have display ads</p> <p>13 always been able to do re -- to achieve a</p> <p>14 retargeting purpose?</p> <p>15 MS. CLEMONS: Objection; form.</p> <p>16 Foundation.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. Okay. Have their capabilities at</p> <p>20 retargeting improved over the course of your</p> <p>21 tenure in the Strategic Marketing Group?</p> <p>22 MS. CLEMONS: Objection; form.</p> <p>23 THE WITNESS: I think the concept of how</p> <p>24 they work for retargeting ads is very similar in</p> <p>25 the entire --</p>
<p style="text-align: right;">Page 139</p> <p>1 media partner that was part of the mix that</p> <p>2 helped us obtain our excellence.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Do you have any recollection of Google</p> <p>5 assisting in any particular way in obtaining your</p> <p>6 excellence in OE9?</p> <p>7 A. Specifics would be a little difficult</p> <p>8 for me to remember right now; however, delivery</p> <p>9 of display ads, search ads, are two ways that I'm</p> <p>10 certain. And, most likely, video ads, as well.</p> <p>11 Q. And can you please turn to Page 259?</p> <p>12 A. I'll try to remember to read the header</p> <p>13 this time.</p> <p>14 Q. This one should be easy. Top of the</p> <p>15 page. Well, the paragraph at the top of the</p> <p>16 page.</p> <p>17 A. See, you're -- you're changing it</p> <p>18 already.</p> <p>19 Q. Where it says Display Media.</p> <p>20 A. I see Display Media.</p> <p>21 Q. Okay. It says, "Display media will</p> <p>22 play an important role for both prospecting and</p> <p>23 retargeting audiences." What is your</p> <p>24 understanding of the difference between</p> <p>25 prospecting and retargeting audiences?</p>	<p style="text-align: right;">Page 141</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. Okay.</p> <p>3 A. -- nine to 10 years.</p> <p>4 Q. How about with respect to prospecting</p> <p>5 ads, have display ads capabilities at prospecting</p> <p>6 an audience improved over the course of your</p> <p>7 tenure in the Strategic Marketing Group?</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 THE WITNESS: It's not a question I ask</p> <p>10 myself. And as a person who likes to look at</p> <p>11 data to think about it, it's not a question I've</p> <p>12 tracked over the last 10 years as a -- you know,</p> <p>13 as an industry.</p> <p>14 So in the general sense of the question</p> <p>15 that you asked, I'd have to say I don't know.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Okay. In the second paragraph here on</p> <p>18 Page 259, can you read the first sentence?</p> <p>19 A. [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 Q. What do you understand that sentence to</p> <p>24 mean based on your experience as the director of</p> <p>25 the Strategic Marketing Group?</p>

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<p style="text-align: right;">Page 142</p> <p>1 MS. CLEMONS: Objection; foundation.</p> <p>2 THE WITNESS: Given the context of</p> <p>3 that sentence, it is an argument written by the</p> <p>4 company seeking business from us, that this</p> <p>5 would be a tactic that they were successful</p> <p>6 at improving the tactic to -- that we were</p> <p>7 successful at improving the tactic from OE -- now</p> <p>8 I forgot if I'm looking at -- ah, from OE8 to</p> <p>9 OE9, yes.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And you said you're somebody who likes</p> <p>12 to look data; is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. And you do, in fact, like to look at</p> <p>15 data?</p> <p>16 A. I do, in fact, like to look at data.</p> <p>17 Q. Do you recall ever seeing any data about</p> <p>18 the efficiency of Google's in-market for health</p> <p>19 insurance targeting capability between OE8 and</p> <p>20 OE9?</p> <p>21 MS. CLEMONS: Objection; form.</p> <p>22 THE WITNESS [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. [REDACTED]</p>	<p style="text-align: right;">Page 144</p> <p>1 MS. CLEMONS: Objection; form.</p> <p>2 THE WITNESS: I do.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 MS. CLEMONS: Objection; form.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: Over the course of the</p> <p>16 entire 10 years in this position have I seen that</p> <p>17 sentence -- data -- data like that sentence</p> <p>18 -- now, I haven't been reading that sentence</p> <p>19 obviously. So I think what you're asking</p> <p>20 -- could you please repeat the question? I'm</p> <p>21 sorry. I'll put words in your mouth, and that's</p> <p>22 not right.</p> <p>23 BY MS. GOODMAN:</p> <p>24 Q. [REDACTED]</p> <p>25 [REDACTED]</p>
<p style="text-align: right;">Page 143</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 MS. CLEMONS: Objection; form.</p> <p>6 Foundation.</p> <p>7 THE WITNESS: The only reason I would</p> <p>8 doubt -- and, to be clear, this is because I'm a</p> <p>9 person who likes to confirm all the time -- is</p> <p>10 that people make mistakes, drawing a conclusion</p> <p>11 that they summarize in one sentence from a set of</p> <p>12 data over two years; and in the enthusiasm of</p> <p>13 writing a proposal for business, that -- that can</p> <p>14 also create interpretation of data.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. Mm-hmm.</p> <p>17 A. So I would confirm. It's the kind of</p> <p>18 person I am. I'm not suggesting that anyone</p> <p>19 actually did make a mistake here, or that I would</p> <p>20 know that they've made a mistake. I would just</p> <p>21 confirm. It's the type of person I am.</p> <p>22 Q. [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">Page 145</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 MS. CLEMONS: Objection; form.</p> <p>10 Foundation.</p> <p>11 THE WITNESS: [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. [REDACTED].</p> <p>16 A. [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 Q. Okay.</p> <p>22 A. [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 Q. [REDACTED]</p>

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<p style="text-align: right;">Page 146</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 MS. CLEMONS: Objection; form. 5 Foundation. 6 THE WITNESS: [REDACTED] 7 [REDACTED] 8 BY MS. GOODMAN: 9 Q. [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 MS. CLEMONS: Objection; form. 15 Foundation. 16 THE WITNESS: I would say -- I think the 17 simple answer is I don't know. 18 BY MS. GOODMAN: 19 Q. Okay. Can you turn to page ending in 20 261? Under OE10 Base Task 1, the last sentence 21 of the paragraph reads, "Performance channels 22 like display and social media will be optimized 23 in realtime to drive email signup and enrollment 24 conversions." Do you see that? 25 A. I do.</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Okay. And then in the middle of 2 paragraph it states, "We will continue to partner 3 with Google where we have continuously seen 4 efficient engagement and reach among individuals 5 who are in the market for health insurance." 6 What do you understand that sentence to mean in 7 your capacity as the director of the Strategic 8 Marketing Group? 9 MS. CLEMONS: Objection; foundation. 10 Form. 11 THE WITNESS: That CMS will work with 12 Weber Shandwick to purchase display services from 13 Google in the next Open Enrollment period. 14 BY MS. GOODMAN: 15 Q. And what connection, if any, does that 16 have to this efficient engagement that Weber 17 Shandwick has continuously seen with Google? 18 MS. CLEMONS: Objection; foundation. 19 THE WITNESS: In this case, we would 20 have to talk to the person who wrote the proposal 21 to get their full understanding of that. 22 BY MS. GOODMAN: 23 Q. In your experience, has CMS continuously 24 seen efficient engagement and reach using Google 25 products or services?</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. Okay. What do you understand that 2 sentence to mean? 3 MS. CLEMONS: Objection; foundation. 4 THE WITNESS: I didn't write the 5 sentence. But if I used the sentence, I would 6 mean it to mean, as we've already talked about 7 optimization, as you -- maybe we'll talk about it 8 again -- that channels like display, like display 9 and social media, so not only display and social 10 media, will be optimized in realtime to drive two 11 of our main goals, which is email signup or 12 enrollment conversions. 13 BY MS. GOODMAN: 14 Q. And is an example of realtime 15 optimization moving money between display and 16 social media channels? 17 MS. CLEMONS: Objection; form. 18 Foundation. 19 THE WITNESS: It could be. 20 BY MS. GOODMAN: 21 Q. Okay. Can you turn to Page 264? 22 Under the Channel and Placement Overview 23 section on this page, five paragraphs down begins 24 Display Media. Do you see where I am? 25 A. Yes.</p>	<p style="text-align: right;">Page 149</p> <p>1 MS. CLEMONS: Objection to form. 2 THE WITNESS: I would say we have seen 3 significant reach, and we -- I don't generally 4 use the term "efficient engagement," so I would 5 not say that. 6 BY MS. GOODMAN: 7 Q. What term would you use instead of 8 "efficient engagement"? 9 MS. CLEMONS: Objection to form. 10 Foundation. 11 THE WITNESS: I'd have to understand 12 what they mean by "efficient engagement" in order 13 to say what term I would use for that. 14 BY MS. GOODMAN: 15 Q. Okay. So do you have an un -- any 16 understanding of what "efficient engagement" 17 means in this sentence? 18 A. It would be purely conjectural on my 19 part. 20 Q. Okay. Can you turn to Page ending in 21 269? 22 A. Yes. 23 Q. In the paragraph under Driving Media 24 Value and Savings, the author states that "They 25 will work closely with Magna, the centralized</p>

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<p>1 IPG network resource that provides marketplace 2 intelligence, investment strategies and 3 negotiation innovation for agency teams and 4 clients." Do you see that? 5 A. I do. 6 Q. Okay. This paragraph also says, 7 "Magna harnesses the aggregate power of all IPG 8 media investments, 23 billion in the U.S. and 9 42.6 billion worldwide, and utilizes powerful 10 insights, market forecasts and strategic 11 relationships to provide marketplace advantage." 12 Do you see that? 13 A. I do. 14 Q. Okay. What do you understand this 15 paragraph to mean with respect to the services 16 Magna provides? 17 MS. CLEMONS: Objection; form. 18 Foundation. 19 THE WITNESS: I read this as sales 20 boilerplate from a corporation trying to 21 demonstrate a tool of a type that we request 22 for media planning. 23 BY MS. GOODMAN: 24 Q. What kind of -- what tool do you request 25 for media planning that you're referring to in</p>	<p>1 Q. I'm handing you Exhibit 67, 2 CMS-ADS-59892 through 59893. 3 A. Thank you. 4 Q. You're welcome. 5 And this is an email you received on 6 November 24th, 2020; is that correct? 7 MS. CLEMONS: Objection; foundation. 8 THE WITNESS: This is an email that was 9 sent on 11-24-2020 at 3:06 in the afternoon. 10 BY MS. GOODMAN: 11 Q. And it was sent to you at that time, 12 correct? 13 A. I am in the To line. 14 Q. Do you have any reason to doubt that you 15 received this message? 16 A. And your definition of received is? 17 Q. What's your definition of received? 18 A. Opened, read, processed the information. 19 Q. What is your practice with respect to 20 opening, reading and processing the information 21 in every email that you -- that is sent to you? 22 A. I do -- 23 MS. CLEMONS: Objection; form. 24 THE WITNESS: I do not have one practice 25 for every email that is open -- that is sent to</p>
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<p>1 your answer? 2 MS. CLEMONS: Objection. 3 Mischaracterizes the witness's testimony. 4 THE WITNESS: We expect our advertising 5 agencies to have tools that evaluate reach 6 of different channels. And even closer than 7 channels, which would be different television 8 programs, for instance, so a finer level of 9 detail, to understand as we're planning a media 10 buy whether or not we are likely to hit the 11 audiences where we are targeting. 12 BY MS. GOODMAN: 13 Q. And then of the last -- second-to-last 14 sentence says, "In addition, we have strategic 15 partnerships with Google, NBCU, Warner Media, 16 Disney, Amazon and Roku." Do you know what 17 "strategic partnership" is being referred to 18 here with Google? 19 A. My understanding would be conjecture. 20 Q. Okay. 21 MS. GOODMAN: Can I have Tab 26? 22 (Exhibit No. 67, a document Bates 23 Numbered CMS-ADS-59892 through 59893, was 24 introduced.) 25 BY MS. GOODMAN:</p>	<p>1 me. 2 BY MS. GOODMAN: 3 Q. What are your general practices with 4 respect to emails that are sent to you? 5 MS. CLEMONS: Objection to form. 6 Foundation. 7 THE WITNESS: My general practices vary 8 depending on where the email came to and who else 9 was addressed on it. 10 BY MS. GOODMAN: 11 Q. Okay. Can you please describe in more 12 detail how your general practices vary depending 13 on who the email came to and who else was 14 addressed on it? 15 MS. CLEMONS: Objection; form. 16 THE WITNESS: I get many cold call 17 emails from media companies, and those would be 18 the lowest priority that I -- that I look at. 19 They're sales emails. It's, like, whether JC 20 Penney sends you a sales email. 21 I get emails that are addressed to my 22 staff on the projects that they are running, and 23 I attend to them as I can based on how busy I am 24 that day. 25 Then I have emails that are addressed to</p>

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<p>1 So we are trying to figure that out.</p> <p>2 Q. When you say, "when we explicitly said</p> <p>3 not to use that network," what -- what networks</p> <p>4 are you referring to?</p> <p>5 A. I'm going to get the names wrong, so</p> <p>6 please forgive me. But there are different</p> <p>7 products, if you will, that Google offers for</p> <p>8 placing video ads, and I just can't think of the</p> <p>9 names of them right now. It's late afternoon.</p> <p>10 The -- and not even caffeine will bring that back</p> <p>11 alive right now. But when looking at our ad buys</p> <p>12 and the different possibilities, we instructed</p> <p>13 Weber and Weber instructed Google to not use the</p> <p>14 one that ProPublica's talking about. Because</p> <p>15 it's not all YouTube ads and all YouTube</p> <p>16 placements that are a problem. It's this one</p> <p>17 product line.</p> <p>18 And -- and we have discovered that they</p> <p>19 actually did place some ads there.</p> <p>20 Q. Okay. What -- what discussions have you</p> <p>21 had with Google salespeople about this issue?</p> <p>22 MS. CLEMONS: Objection to form.</p> <p>23 THE WITNESS: We've had -- I'll say I</p> <p>24 have had one meeting with them. It was their</p> <p>25 desire to explain to us their take on the story.</p>	<p>1 name Sean Harrison?</p> <p>2 A. Yes.</p> <p>3 Q. Is he somebody that you've met with from</p> <p>4 Google?</p> <p>5 A. Yes.</p> <p>6 Q. Was he at this ProPublica meeting, we'll</p> <p>7 call it?</p> <p>8 A. I'm not sure. There's about four people</p> <p>9 from Google, and I'm just -- sorry.</p> <p>10 Q. Okay. Have you ever met Sean Harrison?</p> <p>11 A. Unless I'm getting my Seans mixed up,</p> <p>12 which is a hundred percent possible, I would say</p> <p>13 yes.</p> <p>14 Q. Okay. Under what circumstances did you</p> <p>15 meet with Sean Harrison from Google?</p> <p>16 A. If I'm talking about the right Sean, so</p> <p>17 I say -- I realize that I could be mis -- so when</p> <p>18 Michelle sets up the meetings, she invites Shawn</p> <p>19 at times.</p> <p>20 Q. Can you -- sitting here today, do you</p> <p>21 recall any specific -- any particular meeting</p> <p>22 that you and Sean Harrison were at together?</p> <p>23 A. I -- I wish I could pull it up on my</p> <p>24 -- on my email so I'd make sure I'm -- we're</p> <p>25 talking about the same Sean. But, if we are, he</p>
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<p>1 BY MS. GOODMAN:</p> <p>2 Q. Who from Google did you meet with?</p> <p>3 A. I do not know all the names of people.</p> <p>4 I know the person who set it up.</p> <p>5 Q. Who is that?</p> <p>6 A. Her last name -- boy, I'm trying to</p> <p>7 think of her first name now. She is our main</p> <p>8 sales contact. H-i-n-k-e [sic] would be her last</p> <p>9 name.</p> <p>10 Q. Okay.</p> <p>11 A. Oh my goodness. Michelle.</p> <p>12 Q. And did that take place -- did that</p> <p>13 meeting that you're recalling take place in</p> <p>14 January of 2023, to the best of your</p> <p>15 recollection?</p> <p>16 A. No, it did not take place in January of</p> <p>17 2023.</p> <p>18 Q. When did it take place, to the best of</p> <p>19 your recollection?</p> <p>20 A. Sometime in the last three months.</p> <p>21 Q. Okay.</p> <p>22 A. After the ProPublica report was</p> <p>23 published. So that will at least give you that</p> <p>24 end of the date.</p> <p>25 Q. Okay. Do you know an individual by the</p>	<p>1 is a person who has access to and does analytics</p> <p>2 of Google data that Google does not give us</p> <p>3 access to do analytics for. And he would have</p> <p>4 done some analytics at our request.</p> <p>5 Q. Okay. Do you know an individual by the</p> <p>6 name of Kunal Khanna from Google?</p> <p>7 A. I do.</p> <p>8 Q. And is that a person that you have had</p> <p>9 occasion to communicate with relating to CMS's</p> <p>10 advertising work with Google?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have -- remember any meetings</p> <p>13 with Mr. Khanna?</p> <p>14 A. Yes.</p> <p>15 Q. What meetings do you remember?</p> <p>16 A. So he's been moved to another account,</p> <p>17 and I don't remember exactly when that happened.</p> <p>18 Michelle was his placement [sic]. But they were</p> <p>19 of the same type. They -- Google definitely</p> <p>20 reaches out to us as a -- as a client, which I</p> <p>21 imagine they would think we're an important</p> <p>22 client. And those meetings would be -- they</p> <p>23 provide analytics that they did on their own on</p> <p>24 our campaigns, usually to suggest that running</p> <p>25 more ads on Google networks were a -- was a good</p>

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<p>1 thing. And -- and just describe other products</p> <p>2 and ask us what our goals are, and what have you,</p> <p>3 so that they would have a better understanding</p> <p>4 about how -- about how their products could be</p> <p>5 used, because, of course, they're trying to sell</p> <p>6 their products.</p> <p>7 Q. Did you find those meetings to be</p> <p>8 valuable?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: Valuable in what way?</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Valuable to the work that you do at CMS</p> <p>13 in advertising.</p> <p>14 MS. CLEMONS: Objection; form.</p> <p>15 THE WITNESS: I find them valuable, in</p> <p>16 part, because it's really interesting to me to</p> <p>17 see how people do their work. And, yes, some of</p> <p>18 the data analytics that we've actually requested</p> <p>19 that they've done for us have been valuable.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Despite these meetings also being an</p> <p>22 opportunity for Google to explain how their</p> <p>23 products could be used, because, of course,</p> <p>24 they're trying to sell their products, does CMS</p> <p>25 still make an independent decision about which</p>	<p>1 including Google, have a policy that an ad should</p> <p>2 not -- what's the word I'm looking for -- mimic</p> <p>3 -- that's not the word I'm looking for, but it's</p> <p>4 like that, mimic some other existing</p> <p>5 organization, or mimic the government when you're</p> <p>6 not the government, basically.</p> <p>7 So, you know, an ad that says they're</p> <p>8 Medicare, and they're not actually Medicare, is</p> <p>9 misleading to people, and there are a lot of</p> <p>10 those ads on Google. And so when we find them,</p> <p>11 we send them and they -- we have conversations</p> <p>12 about that.</p> <p>13 Q. And what steps, if any, do you ask</p> <p>14 Google to take with respect to these ads -- these</p> <p>15 search ads you're describing?</p> <p>16 A. Take them down immediately. Asked for</p> <p>17 some monitoring support. I've asked for it.</p> <p>18 That is what I've asked for.</p> <p>19 Q. And what -- what has Google, in return,</p> <p>20 provided to you with respect to these search ads?</p> <p>21 A. Google has taken ads down when we find</p> <p>22 them, and that is Whac-A-Mole because anybody can</p> <p>23 put up an ad on Google if they've got a credit</p> <p>24 card. Google has created new policies about</p> <p>25 taking out ads for health insurance, and have met</p>
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<p>1 advertising products or services to use?</p> <p>2 A. Absolutely, yes.</p> <p>3 Q. Okay. Anything else, sitting here</p> <p>4 today, that you can recall about any</p> <p>5 conversations you have had with any individual</p> <p>6 from Google --</p> <p>7 MS. CLEMONS: Objection; form.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. -- relative to CMS's advertising?</p> <p>10 MS. CLEMONS: Same objection.</p> <p>11 THE WITNESS: That's a lot to try to</p> <p>12 recall. So it -- true specifics? No.</p> <p>13 Conversations? Yes.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Any other types of conversations, other</p> <p>16 than what we've discussed which you recall having</p> <p>17 with Google?</p> <p>18 A. Yes. Thank you.</p> <p>19 Q. You're welcome.</p> <p>20 A. In the search ad -- in the search ad</p> <p>21 arena, Google accepts ads -- or has accepted ads,</p> <p>22 from people who try to look like the government.</p> <p>23 And we discover these ads sometimes. And every</p> <p>24 time I see one, I would send it to Kunal, to</p> <p>25 Michelle. And -- because most digital companies,</p>	<p>1 with us about those policies.</p> <p>2 Q. So is it fair to say that Google is</p> <p>3 taking steps to address CMS's concerns with</p> <p>4 respect to search ads that mimic the government?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 THE WITNESS: It is fair to say Google</p> <p>7 has taken steps with regard to search ads.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. How about with respect to display ads?</p> <p>10 Are you aware of any conduct on the part of</p> <p>11 Google with respect to display ads that has</p> <p>12 negatively impacted CMS's advertising?</p> <p>13 MS. CLEMONS: Objection to form. And I</p> <p>14 would caution the witness not to -- to answer the</p> <p>15 question if your answer would reveal privileged</p> <p>16 communications with counsel.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Are you able to answer that question?</p> <p>19 A. No.</p> <p>20 Q. Prior to having any conversation with</p> <p>21 any lawyer with respect to Google Ads, any lawyer</p> <p>22 from the government, did you ever have any</p> <p>23 concerns that Google was engaging in</p> <p>24 anticompetitive conduct related to display</p> <p>25 advertising?</p>

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<p style="text-align: right;">Page 222</p> <p>1 MS. CLEMONS: Objection to form. Calls</p> <p>2 for a legal conclusion.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And prior to any conversation with any</p> <p>6 lawyer for the government, did you ever have any</p> <p>7 concerns that Google was causing CMS to pay more</p> <p>8 for display advertising than it should have been</p> <p>9 paying?</p> <p>10 A. Could you rephrase that, please -- or</p> <p>11 not rephrase. Just repeat it. That's what I</p> <p>12 meant. I'm so sorry.</p> <p>13 Q. That's okay.</p> <p>14 A. I used the wrong word.</p> <p>15 Q. Prior to any conversation with any</p> <p>16 lawyer for the government, did you ever have any</p> <p>17 concerns that Google was causing CMS to pay more</p> <p>18 for display advertising than it should have been</p> <p>19 paying?</p> <p>20 MS. CLEMONS: Objection; form.</p> <p>21 THE WITNESS: The tough part here is</p> <p>22 "should have been paying." That's an -- a really</p> <p>23 -- that suggests a lot of information.</p> <p>24 That being said, yes.</p> <p>25 BY MS. GOODMAN:</p>	<p style="text-align: right;">Page 224</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. -- who charge on such a basis, to your</p> <p>3 knowledge?</p> <p>4 MS. CLEMONS: Same objection.</p> <p>5 THE WITNESS: There are other providers.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. And do you have the same concerns with</p> <p>8 respect to providers other than Google who charge</p> <p>9 on a cost-per-impression basis?</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Okay. Has anybody at any advertising</p> <p>14 agency with whom CMS works ever told you that</p> <p>15 Google was engaging in anticompetitive conduct</p> <p>16 related to display advertising?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Okay. So sitting here today, and prior</p> <p>19 to any conversation with any lawyer for the</p> <p>20 government, can you recall any concerns you've</p> <p>21 ever had with respect to Google's conduct and its</p> <p>22 affect on CMS's display advertising purchases?</p> <p>23 MS. CLEMONS: Objection to form.</p> <p>24 THE WITNESS: Extremely informal</p> <p>25 conversations between me and my colleagues.</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. And what -- what concerns did you have</p> <p>2 with respect to Google causing CMS to pay more</p> <p>3 for display advertising than it should have been</p> <p>4 paying prior to any conversation with a lawyer</p> <p>5 for the government?</p> <p>6 A. It is possible -- in fact, indeed,</p> <p>7 probable, that when you are purchasing ads on a</p> <p>8 cost-per-impression basis, that you're buying</p> <p>9 things that are not useful to you.</p> <p>10 Q. And so in what ways has Google, to your</p> <p>11 knowledge, caused you to buy things that are not</p> <p>12 useful to you on a cost-per-impression basis?</p> <p>13 And when I say you, I mean CMS.</p> <p>14 MS. CLEMONS: Objection to form.</p> <p>15 THE WITNESS: It has been a concern that</p> <p>16 we have discussed. Whether it is -- the way you</p> <p>17 put the question was, like, pure knowledge.</p> <p>18 Because other ways to potentially buy, which we</p> <p>19 have not been able to do, would be to buy based</p> <p>20 on outcomes instead of impressions.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. And is Google the only provider that you</p> <p>23 buy ads on an impression basis for, or are there</p> <p>24 other providers --</p> <p>25 MS. CLEMONS: Objection to form.</p>	<p style="text-align: right;">Page 225</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. And what extremely informal</p> <p>3 conversations between you and your colleagues are</p> <p>4 you referencing?</p> <p>5 A. Ones where we notice that all</p> <p>6 the digital ads that we place go through</p> <p>7 double-click; that the analytics come through</p> <p>8 Google analytics. There just seems to be a lot</p> <p>9 of Google along the ways. And we've had those</p> <p>10 comments, conversations and we just move on.</p> <p>11 Because, in the end of the day, we're just doing</p> <p>12 our jobs.</p> <p>13 Q. And have you rai -- ever raised those</p> <p>14 conversations with anybody outside of your</p> <p>15 colleagues?</p> <p>16 MS. CLEMONS: Objection to the extent</p> <p>17 that question calls for privileged communications</p> <p>18 with counsel. If you're -- if you can answer</p> <p>19 without referencing or being informed by</p> <p>20 privileged communications with counsel, you</p> <p>21 may do so.</p> <p>22 THE WITNESS: Sorry. I'm just trying to</p> <p>23 think and remember. It's mental gymnastics at</p> <p>24 this point. So --</p> <p>25 BY MS. GOODMAN:</p>

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<p>1 Q. So you can't answer -- you are unable</p> <p>2 to answer that question without relying on</p> <p>3 privileged communications; is that correct?</p> <p>4 A. That is correct.</p> <p>5 Q. So you've never raised those concerns</p> <p>6 with anybody at your advertising agencies, for</p> <p>7 example. Is that accurate?</p> <p>8 A. As part of the informal conversations</p> <p>9 with colleagues, I can't recall.</p> <p>10 Q. Okay. You referenced DoubleClick. What</p> <p>11 is DoubleClick?</p> <p>12 A. DoubleClick is a tool that allows us to</p> <p>13 track ad performance and our websites together.</p> <p>14 Q. So it's a -- it's an -- a data</p> <p>15 monitoring tool. Is that accurate?</p> <p>16 A. From my understanding, that's partially</p> <p>17 accurate. It's also a data-creating tool.</p> <p>18 Q. And Google Analytics, has CMS decided</p> <p>19 not to use Google Analytics anymore --</p> <p>20 MS. CLEMONS: Objection; form.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. -- within the Strategic Marketing Group,</p> <p>23 at least?</p> <p>24 A. The Strategic Marketing Group did not</p> <p>25 decide not to use Google Analytics.</p>	<p>1 networks and talk about the price of what's</p> <p>2 available.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And do you participate in discussions</p> <p>5 between advertising agencies and any vendors over</p> <p>6 price for ad buys on behalf of CMS?</p> <p>7 MS. CLEMONS: Objection to form.</p> <p>8 THE WITNESS: We participate in</p> <p>9 conversations with the ad agencies over price and</p> <p>10 what they've done to negotiate, and we provide</p> <p>11 direction when we think there's other</p> <p>12 negotiations that should be done.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Okay. But you -- but does any</p> <p>15 individual from CMS actually participate in the</p> <p>16 negotiations over price?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 Foundation.</p> <p>19 THE WITNESS: To the extent that we</p> <p>20 direct our ad agencies on negotiating a price, we</p> <p>21 do participate.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Okay. Beyond -- aside from the</p> <p>24 extent to which you direct your ad agencies on</p> <p>25 negotiating a price, is there any other way in</p>
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<p>1 Q. Did somebody else decide not to use</p> <p>2 Google Analytics?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: By "somebody else,"</p> <p>6 would -- could you give me a little more on that?</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Is the Strategic Marketing Group -- has</p> <p>9 the Strategic Marketing Group transitioned from</p> <p>10 using Google Analytics to an Adobe product?</p> <p>11 A. The Strategic Marketing Group is in the</p> <p>12 process of that right now.</p> <p>13 Q. Okay. Why are you in that process now?</p> <p>14 A. The people who manage the websites,</p> <p>15 which is different from the Strategic Marketing</p> <p>16 Group, made a decision to go from Google</p> <p>17 Analytics to the Adobe product.</p> <p>18 Q. Okay. So under the agency -- the</p> <p>19 CMS's contracts with advertising agencies, is it</p> <p>20 accurate that the advertising agency negotiates</p> <p>21 the prices to be paid for advertising?</p> <p>22 MS. CLEMONS: Objection to form.</p> <p>23 Foundation.</p> <p>24 THE WITNESS: In an ad agency, there</p> <p>25 are buyers who get on the phones, like, with TV</p>	<p>1 which you participate in such negotiations? And</p> <p>2 when I say "you," I mean CMS individuals.</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: Our participation is</p> <p>6 through the direction of those who work for us.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Okay. The advertising purchases which</p> <p>9 your ad agency makes on behalf of CMS are part of</p> <p>10 a bundle of services that the ad agency provides,</p> <p>11 correct?</p> <p>12 MS. CLEMONS: Objection; form.</p> <p>13 Foundation.</p> <p>14 THE WITNESS: I'm not sure what you mean</p> <p>15 by "bundle."</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. A group of services that the ad agency</p> <p>18 provides includes buying ads, as well as other</p> <p>19 services, correct?</p> <p>20 MS. CLEMONS: Objection to form.</p> <p>21 Foundation.</p> <p>22 THE WITNESS: I would say that we</p> <p>23 contract with the ad agencies to help us</p> <p>24 implement our ad campaigns.</p> <p>25 BY MS. GOODMAN:</p>

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<p>1 and, two, that as the -- that advertisers, 2 therefore, have spent more money than might be 3 necessary in a noncompetitive -- in -- well, let 4 -- I screwed up my words. The advertisers, 5 therefore, spent more money than they would in a 6 competitive environment. 7 BY MS. GOODMAN: 8 Q. When did you read the complaint? 9 A. I -- 10 days ago. 10 Q. Did you have any occasion to read the 11 complaint in the course -- as re -- strike that. 12 Why didn't you read it sooner than 10 13 days ago? 14 A. And I'm really sorry, because I just 15 can't recall having read it before then. I am 16 -- I am certain I did, but I just don't know 17 when. So I gave you the answer that I know is 18 the most accurate, which is 10 days ago. 19 Q. Okay. 20 A. But I -- I apologize. I should have 21 said both. 22 Q. Okay. Do you recall whether the Center 23 for Medicare and Medicaid Services is referenced 24 at all in the complaint as a purchaser of 25 advertising?</p>	<p>1 may not be put in a document that I reviewed. 2 BY MS. GOODMAN: 3 Q. Okay. When did you first learn that you 4 would be involved in this lawsuit? 5 MS. CLEMONS: Objection to form. Also 6 caution the witness not to answer to the extent 7 that your answer would reveal the substance of 8 privileged communications with counsel. 9 BY MS. GOODMAN: 10 Q. And the question is when did you learn, 11 not from who, not how. It's simply when did you 12 learn you would be involved in this lawsuit. Can 13 you answer that question without relying on any 14 communications with lawyers? 15 A. Now I've got confused about the 16 question. Is it when I learned without relying 17 on -- on communications with lawyers, or when did 18 I learn and answer the question without relying 19 on communications by lawyers? 20 Q. Well, from my point of view, the 21 question is very simple. It doesn't at all 22 depend on communications with lawyers. And my 23 question to you is when did you learn that you 24 would be participating in this lawsuit? 25 MS. CLEMONS: Objection to form.</p>
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<p>1 A. I do not recall. 2 Q. Okay. Would it surprise you to learn 3 that CMS is not mentioned in the complaint? 4 MS. CLEMONS: Objection; form. 5 THE WITNESS: No, it would not surprise 6 me. 7 BY MS. GOODMAN: 8 Q. Why would it not surprise you to learn 9 that CMS is not mentioned in the complaint as a 10 purchaser of advertising even though you are 11 here sitting, providing testimony today, in your 12 capacity as the strategic marketing director for 13 CMS -- 14 MS. CLEMONS: Ob -- 15 BY MS. GOODMAN: 16 Q. -- about your digital advertising 17 purchases? 18 MS. CLEMONS: Objection to form. I will 19 caution the witness not to answer if your answer 20 would reveal the substance of privileged 21 communications with counsel. 22 THE WITNESS: The complaint lays out 23 arguments as to the monopoly status of Google. 24 And I'm not an expert in legal proceedings, so I 25 don't necessarily question why something may or</p>	<p>1 THE WITNESS: What is your definition of 2 "participation"? 3 BY MS. GOODMAN: 4 Q. Providing documents. Providing 5 information. Providing testimony. 6 A. I am not certain of the first time when 7 all of that was clear. If I was to do a paper 8 trail, I would say the document that you handed 9 would be a possible, which would suggest early 10 January. 11 Q. Okay. Which documents are you referring 12 to? 13 A. There's a series of them here in early 14 January that would suggest to me that during the 15 course of that time is when I learned. 16 Q. Okay. And it's possible that you 17 learned during that time, but you don't know for 18 certain? 19 A. I would go as far as saying probable. 20 Q. Why? 21 MS. CLEMONS: Objection. I'll instruct 22 the witness not to answer to the extent that your 23 answer would reveal the substance of privileged 24 communications with counsel. 25 BY MS. GOODMAN:</p>

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<p>1 Q. Are you able to answer that question?</p> <p>2 A. No.</p> <p>3 Q. Okay. Did you receive a litigation</p> <p>4 hold?</p> <p>5 A. Yes.</p> <p>6 MS. CLEMONS: Objection. I'm going to</p> <p>7 instruct the witness not to answer that question.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Are you following that instruction?</p> <p>10 A. Yes.</p> <p>11 Q. To the extent you received a litigation</p> <p>12 hold, was it before or after January 24th, 2023?</p> <p>13 MS. CLEMONS: I'm going to object</p> <p>14 that that calls for privileged information and</p> <p>15 instruct the witness not to answer.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Are you following that instruction?</p> <p>18 A. Yes, I am.</p> <p>19 Q. Prior to 2000 -- January of 2023, did</p> <p>20 anybody from the Department of Justice ever reach</p> <p>21 out to you inquiring about CMS's online</p> <p>22 advertising purchases?</p> <p>23 A. I'm sorry. From where?</p> <p>24 Q. Prior to January of 2023, did anybody</p> <p>25 from the Department of Justice ever reach out to</p>	<p>1 providing -- telling them not to answer the</p> <p>2 question. So do you want to reconsider?</p> <p>3 MS. CLEMONS: I'm going to instruct</p> <p>4 the witness not to answer a question that</p> <p>5 specifically asks what he did or did not speak</p> <p>6 to the Department of Justice about.</p> <p>7 MS. GOODMAN: Okay. Well, Counsel,</p> <p>8 obviously I reserve all of my rights to reask all</p> <p>9 of these questions of this witness, because they</p> <p>10 are not calling for privileged information, as</p> <p>11 our motion makes clear.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Prior to January -- have you ever spoken</p> <p>14 with anybody from a state attorney general office</p> <p>15 about CMS's online advertising purchases?</p> <p>16 MS. CLEMONS: I'm going to instruct the</p> <p>17 witness not to answer to the extent that the</p> <p>18 answer would reveal privileged communications</p> <p>19 with counsel. Otherwise, you may answer yes or</p> <p>20 no.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Okay. And so even prior to January of</p> <p>24 2023 you have never spoken with anybody from a</p> <p>25 state attorney general office about CMS's online</p>
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<p>1 you inquiring about CMS's online advertising</p> <p>2 purchases?</p> <p>3 MS. CLEMONS: I'm going to instruct the</p> <p>4 witness not to answer to the extent that your</p> <p>5 answer would be informed by privileged</p> <p>6 communications with counsel.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Are you following that instruction?</p> <p>9 A. Yes, I am.</p> <p>10 Q. So you have no independent recollection,</p> <p>11 one way or another, of whether anybody from the</p> <p>12 Department of Justice reached out to you about</p> <p>13 CMS's online advertising purchases prior to</p> <p>14 January of 2023?</p> <p>15 MS. CLEMONS: Again, I'm objecting to</p> <p>16 privilege -- on privilege grounds. Counsel is</p> <p>17 asking for the substance of communications with</p> <p>18 counsel, and I'm going to instruct the witness</p> <p>19 not to answer.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Are you following that instruction?</p> <p>22 A. Yes, I am.</p> <p>23 MS. GOODMAN: Okay. Every other witness</p> <p>24 that I've asked this question to has answered it</p> <p>25 without an instruction of your colleagues</p>	<p>1 advertising purchases, correct?</p> <p>2 A. I believe my answer to the question</p> <p>3 answered that.</p> <p>4 Q. So the answer is no, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Has anything about this lawsuit</p> <p>7 changed how CMS conducts its ad purchasing?</p> <p>8 MS. CLEMONS: I'm going to object to the</p> <p>9 extent that question calls for information -- the</p> <p>10 substance of communications of counsel or actions</p> <p>11 taken at the direction of counsel. But if you</p> <p>12 can answer without reference to communications</p> <p>13 with counsel, you had may do so.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. Has anything about this lawsuit changed</p> <p>17 whether you will use Google products or services</p> <p>18 in connection with CMS's advertising?</p> <p>19 MS. CLEMONS: Same objection. Same</p> <p>20 instruction.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Do you use chat, like Teams chat,</p> <p>24 iMessage, other forms of chat for work purposes?</p> <p>25 MS. CLEMONS: Objection to form.</p>

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<p style="text-align: right;">Page 286</p> <p>1 THE WITNESS: No, I do not.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. Okay. Does anybody within Strategic</p> <p>4 Marketing Group use chat for work purposes, to</p> <p>5 your knowledge?</p> <p>6 MS. CLEMONS: Objection to form.</p> <p>7 THE WITNESS: I do not know.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Okay. Do you ever use your personal</p> <p>10 email for work purposes?</p> <p>11 A. No.</p> <p>12 Q. Do you have a work-provided cell phone</p> <p>13 or other mobile device?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you use that for work</p> <p>16 purposes?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you know whether any documents</p> <p>19 have been collected from your personal devices</p> <p>20 -- I'm sorry, your mobile devices provided by</p> <p>21 work for purposes of this litigation?</p> <p>22 A. There are no documents on my mobile</p> <p>23 device.</p> <p>24 Q. Do you use -- is your mobile device an</p> <p>25 iPad, an iPhone, an Android? What is it?</p>	<p style="text-align: right;">Page 288</p> <p>1 MS. CLEMONS: Objection to form.</p> <p>2 THE WITNESS: It's basically an</p> <p>3 irrelevant question for this top -- for this</p> <p>4 context. In my level of management, all emails</p> <p>5 are immediately archived.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. How do you know that?</p> <p>8 A. Because I've been informed it as a</p> <p>9 person in my level of management. I've been told</p> <p>10 by the agency.</p> <p>11 Q. Who at the agency has told you that all</p> <p>12 of your emails are immediately archived?</p> <p>13 A. That would have actually occurred in the</p> <p>14 email, and the exact person I don't know.</p> <p>15 Q. Okay. How about the position of the</p> <p>16 person?</p> <p>17 A. This is an org chart issue. It's either</p> <p>18 OIT or SORA.</p> <p>19 Q. Okay. And so notwithstanding the fact</p> <p>20 that somebody has told you all of your emails are</p> <p>21 immediately archived, do you ever delete emails?</p> <p>22 MS. CLEMONS: Objection to form.</p> <p>23 THE WITNESS: I delete two types of</p> <p>24 emails.</p> <p>25 BY MS. GOODMAN:</p>
<p style="text-align: right;">Page 287</p> <p>1 A. It's an iPhone.</p> <p>2 Q. Okay. Do you use iMessage on your</p> <p>3 iPhone for work purposes?</p> <p>4 A. Not in relationship to advertising.</p> <p>5 Q. For what work purposes do you use</p> <p>6 iMessage on your iPhone?</p> <p>7 A. To get a senior leader's attention who</p> <p>8 didn't read an email where the substance of the</p> <p>9 work exists.</p> <p>10 Q. Could the substance of that email relate</p> <p>11 to advertising that you're trying to get a senior</p> <p>12 leader's attention about?</p> <p>13 MS. CLEMONS: Objection to form.</p> <p>14 THE WITNESS: Extremely unlikely.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. But it's possible?</p> <p>17 A. No.</p> <p>18 Q. Why not?</p> <p>19 A. Advertising is a complex topic and,</p> <p>20 therefore, requires a larger format to con -- to</p> <p>21 converse on.</p> <p>22 Also, I'm old school. I just like</p> <p>23 email. It's all there. And it's there for you</p> <p>24 now.</p> <p>25 Q. Do you ever delete emails?</p>	<p style="text-align: right;">Page 289</p> <p>1 Q. What are those?</p> <p>2 A. The ones where my staff tell me they</p> <p>3 started work and ended work, which are only used</p> <p>4 so I don't call them outside of that time, unless</p> <p>5 it's a real emergency. And the incredible load</p> <p>6 of advertisements I get in my email.</p> <p>7 Q. And since January of 2023, have you</p> <p>8 deleted any work emails?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: Only of the style that</p> <p>11 I've talked -- mentioned.</p> <p>12 MS. GOODMAN: Okay. Let's take a break.</p> <p>13 THE VIDEOGRAPHER: Time is 6:11 p.m.</p> <p>14 We're off the record.</p> <p>15 (Recess taken.)</p> <p>16 THE VIDEOGRAPHER: The time is 6:22 p.m.</p> <p>17 We're on the record.</p> <p>18 MS. GOODMAN: I have no further</p> <p>19 questions at this time and reserve the remainder</p> <p>20 of my time to ask the questions over which</p> <p>21 improper instructions not to answer have been</p> <p>22 provided.</p> <p>23 Pass the witness.</p> <p>24 MS. CLEMONS: We have no questions,</p> <p>25 although it is our position that the -- the</p>

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<p style="text-align: right;">Page 290</p> <p>1 deposition is over and that Google does not have</p> <p>2 grounds to hold the deposition open.</p> <p>3 MS. GOODMAN: Okay. Thank you for your</p> <p>4 time, Mr. Koepke.</p> <p>5 THE WITNESS: It was my pleasure. This</p> <p>6 was fun.</p> <p>7 THE VIDEOGRAPHER: Time is 6:23 p m.</p> <p>8 We're off the record.</p> <p>9 (Deposition concluded -- 6:23 p m.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 292</p> <p>1 Katherine Clemons Esq</p> <p>2 Katherine.clemons@usdoj.gov</p> <p>3 August 22nd, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 8/21/2023, Christopher Koepke (#6043164)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 (erratas-cs@veritext.com).</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 291</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I do hereby certify that I am a Notary</p> <p>4 Public in good standing, that the aforesaid</p> <p>5 testimony was taken before me, pursuant to</p> <p>6 notice, at the time and place indicated; that</p> <p>7 said deponent was by me duly sworn to tell the</p> <p>8 truth, the whole truth, and nothing but the</p> <p>9 truth; that the testimony of said deponent was</p> <p>10 correctly recorded in machine shorthand by me and</p> <p>11 thereafter transcribed under my supervision with</p> <p>12 computer-aided transcription; that the deposition</p> <p>13 is a true and correct record of the testimony</p> <p>14 given by the witness; and that I am neither of</p> <p>15 counsel nor kin to any party in said action, nor</p> <p>16 interested in the outcome thereof.</p> <p>17</p> <p>18 WITNESS my hand and official seal this</p> <p>19 22nd day of</p> <p>20 </p> <p>21</p> <p>22 Notary Public</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 293</p> <p>1 United States, Et Al v. Google, LLC</p> <p>2 Christopher Koepke (#6043164)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE ____ LINE ____ CHANGE ____</p> <p>5</p> <p>6 REASON ____</p> <p>7 PAGE ____ LINE ____ CHANGE ____</p> <p>8</p> <p>9 REASON ____</p> <p>10 PAGE ____ LINE ____ CHANGE ____</p> <p>11</p> <p>12 REASON ____</p> <p>13 PAGE ____ LINE ____ CHANGE ____</p> <p>14</p> <p>15 REASON ____</p> <p>16 PAGE ____ LINE ____ CHANGE ____</p> <p>17</p> <p>18 REASON ____</p> <p>19 PAGE ____ LINE ____ CHANGE ____</p> <p>20</p> <p>21 REASON ____</p> <p>22</p> <p>23</p> <p>24 Christopher Koepke Date</p> <p>25</p>

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1 United States, Et Al v. Google, LLC

2 Christopher Koepke (#6043164)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Christopher Koepke, do hereby declare that I

5 have read the foregoing transcript, I have made any

6 corrections, additions, or changes I deemed necessary as

7 noted above to be appended hereto, and that the same is

8 a true, correct and complete transcript of the testimony

9 given by me.

10

11 _____

12 Christopher Koepke Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16

17

18 _____

19 NOTARY PUBLIC

20

21

22

23

24

25

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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